(2011) 11 KAR CK 0130

In the Karnataka High Court

Case No : Writ Petition No. 17679 of 2007 (S-R)

Miss. Vasudha Ramabhadran APPELLANT

Vs

Syndicate Bank RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Karnataka Recruitment Rules — Rule 22, 22 (1)
Syndicate Bank Employees Pension Regulations, 1993 — Regulation 26

Citation : (2011) 11 KAR CK 0130

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : N.S. Prasad, for the Appellant; K. Radhesh Prabhu and Shri. Deepak Dave, Advocates for M/s. Prabhu and Dave, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy

1. Heard the learned counsel for the petitioner and the learned counsel for the respondent. The brief facts of the case are as follows:

The petitioner was a Practicing Advocate who had obtained a Bachelor of Law Degree in the year 1967. The respondent - Bank had invited applications from eligible candidates for the post of Law Officer, in the Bank. The notification in this regard is at Annexure-"A" to the writ petition It was indicated that the maximum age prescribed for the post was 35 years and had also prescribed a minimum of seven years practice as a lawyer. The petitioner was found duly qualified and was appointed by an order dated 26.09.1978, in terms of Annexure-"C" to the writ petition, as a Law Officer in the Senior grade of the Officers'' cadre. The petitioner''s period of probation was declared satisfactorily as on 14.11.1979 and she was confirmed in the permanent service of the Bank in the Senior Officers'' grade. She was promoted from time to time and retired from service as Assistant General Manager, (Law), on 31.01.2003. Her pension was settled in terms of Annexure-"E". However, the Qualifying service taken into account was only 24 years from the date of confirmation i.e. from 6.10.1979 to the date of retirement. It is this which is the grievance of the petitioner. According to the petitioner, the Bank had introduced a pension scheme for its employees namely the Syndicate Bank Employees Pension Regulations, 1993 (hereinafter referred to as the ''Regulations'' for brevity), which was a scheme pursuant to a settlement signed by the Indian Banks Association with the Workmens Union / Officers Organisation on industrial level on 29.10.1993. The scheme, inter alia, provided for an option to the existing employees who were on the rolls as on 1.11.1993 to exercise their options thereunder namely employees joining the Bank or who had joined the Bank on or after 1.11.1993, who were eligible only for pension value contributory provident fund and were covered under the pension scheme automatically. It is pointed out that under Regulation 26 employees qualifying for superannuation pension, were eligible to add to his or her service the actual period not exceeding one fourth of the length of his service, or the actual period by which, his age at the time of recruitment exceeded the upper age limit specified by the Bank for direct recruitment, or a period of five years, whichever was less, if the service or post to which the employee was appointed is one which required post-graduate, research or specialist qualifications, or experience in scientific, technological or professional fields. When the petitioner applied to the Bank, the age of recruitment was increased to 35 years, due to the requirement of professional experience of a minimum 7 years, for the post of Law Officers. Therefore, it is the petitioner''s case that she fulfilled the requirement of the 1995 Regulation 26 for addition of the qualifying service under that regulation and since she was denied the addition of qualifying service of a period of five years, the petitioner made a representation as per Annexure-"H".

2. The respondent issued an endorsement at Annexure-"J" rejecting the claim of the petitioner on the ground that the Government of India, on a pointed query raised by the respondent, had clarified that the employees such as the petitioner would not be entitled for any such claim, on the footing that the Regulation is to be applied only for future recruitment and not for existing employees. This the learned counsel for the petitioner would submit is not tenable since in terms of the Regulations itself, it is clear that it would apply to all employees who were in service of the Bank as on 1.11.1993 and the addition of qualifying service would make it clear that it would apply to all employees who were in service and not only to employees recruited in future alone. It is in this background that the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that in so far as the ease of the petitioner is concerned, admittedly she was a Law Officer with 13 years of experience as a Lawyer, prior to her appointment. It is stated that a Committee for Standardisation of Pay Scales, Allowances and Perquisites of Officers in the Nationalised Banks was constituted. The said Committee has submitted its report as on 30.05.1974 which is binding on the respondent - Bank and in the course of its report, it has clearly spelt out that Specialist Officers found in the majority of Banks, would include ''Law Officers''. It is evident from a reading of the said

Committee''s report, a copy of which is made available to the Court. At several places in the said report, especially at Paragraphs 3.12, 3.13, 3.21, 5.28 and 5.29, this is evident and therefore, there can be no two opinions that the appointment order which clearly refers to the Pillai Committee report would render the appointment of the petitioner, as a Law Officer, as being construed as a Specialist Officer in which event, a plain reading of Regulation 26 of the Pension Regulations would enable the petitioner to claim the addition of five years of qualifying service which has been denied and therefore on the face of it, the learned counsel for the petitioner would submit that the respondent - Bank has failed in its duty to address the case of the petitioner in spite of a specific direction by this Court in an earlier writ petition filed in W.P.No. 10634/2004 dated 19.12.2006 pursuant to which the petitioner''s claim has been rejected over again, and it is in that background that the petitioner seeks appropriate directions to the respondent -Bank.

4. The learned counsel for the respondent on the other hand, would vehemently contest the petition and in support of the Statement of objections filed would contend that the appointment order, on the face of it, does not refer to the petitioner as a ''Specialist Officer'' within the meaning of Regulation No.26. It is the petitioner''s own interpretation as to "Law Officers" being Specialist Officers and the writ petition is not supported by any document to indicate that the appointment order can be construed as indicating that the petitioner is a Specialist Officer. That notwithstanding, the reference to Piliai Committee Report which is produced before the Court subsequent to completion of the pleadings, the same would not advance the case of the petitioner since the petitioner cannot deny that he was placed in the general stream of Bank employees and was not considered as a Specialist Officer as was the case of officers such as Chartered Accountants, Economists, etc., who continue in the same position throughout their service tenure and therefore, could be safely treated as specialists. The petitioner though appointed as a Law Officer, she was not continued in the same capacity and the petitioner has been appointed as an Assistant General Manager in charge of a branch also during her tenure and therefore, the petitioner cannot, by any stretch of imagination, be considered as a Specialist Officer by reference to the Pillai Committee report. It is only an assumption on the part of the petitioner that she was appointed as a Specialist Officer and therefore, the petitioner being denied the additional qualifying service, is in order. The learned counsel would submit that an unfair contention has been taken that the direction issued by this Court in the earlier writ petition has not been complied with. On the other hand, every single contention of the petitioner has been addressed, in that, the Service Regulations did not provide for appointment of a Specialist Officer and as such, the petitioner was not appointed as a Specialist Officer, This is evident from the appointment order. In the absence of Recruitment Rules, the order of appointment and the order of confirmation clearly indicates that the petitioner was appointed only as an Officer in the Bank and was fit into the category of the Officer of the Bank as per

recommendations of the said Pillai committee report. The Pension Regulations came into effect from 29.09.1995 and were not in force as on date the petitioner was appointed. Having regard to the law laid down by this Court in the case of B. Vittal Pai Vs. Syndicate Bank, Manipal, , to the effect that the provisos to Regulation 26 of the Pension Regulations, are retrospective in nature. The petitioner is not in a position to draw sustenance from the same and since the second proviso to Regulation 26 spells out that unless the benefit contemplated under the Regulation 26 is conferred on the employee under the Regulations itself, the question of the employee seeking the benefit of the same does not arise. As the petitioner was not given the benefit of appointment as a Specialist Officer, the petitioner was not treated as a Specialist Officer. In the first instance, the question of adding five years of additional qualifying service by virtue of Regulation 26 would not arise and in the absence of any such Regulation conferring the benefit on the petitioner, the same cannot be pressed into service. Further, it is only if the Recruitment Rules duly framed and approved by the Central Government providing for such benefit, that the same can be claimed by the petitioner. In the absence of any Recruitment Rules as on date, the petitioner placing reliance on the appointment order which does not indicate that he was a specialist officer, would not afford the petitioner to claim such status and claim additional qualifying service. It is in this vein that the learned counsel for the respondent would seek to deny the benefit to the petitioner.

5. From the above facts and circumstances, it is not in dispute that neither the Recruitment Rules nor the Pension Regulations were in force as on the date the petitioner was appointed as a Law Officer. The petitioner had the experience of 13 years as a Lawyer as on the date of such recruitment. Whether such experience could enable the petitioner to claim the states of a Specialist Officer, cannot be in doubt. This is evident from the Pillai Committee Report itself which treats a Law Officer as a Specialist Officer. Hence, in the absence of Rules of recruitment or the Pension Regulations defining Law Officers as a Specialist Officers, whether a Law Officer who is appointed by virtue of his experience, which is not less than seven years, can be treated as a Specialist Officer, cannot he in dispute. The petitioner was certainly a Specialist Officer, in which event the next question would be whether the Pension Regulations providing for addition of five years of service, can be pressed into service in so far as the petitioner is concerned. If the petitioner has been accepted as a Specialist Officer and if the minimum qualifying service rendered by the petitioner is not in dispute, the petitioner, is certainly entitled to claim the additional qualifying service. Reference to the provisos to Regulation 26 would not arise for consideration in the present case since the question of the Recruitment Rules providing for any benefit to the petitioner would arise only if such rules had been framed even before the appointment of the petitioner. Any subsequent rules being framed would be irrelevant in so far as the petitioner is concerned. Hence, to contend that the Recruitment Rules are framed and duly approved by the Central Government as required under the third proviso to the Regulations, the petitioner

cannot be conferred any such benefit, is not a contention that can be accepted. The Pension Regulations have certainly come into force even before the petitioner attained the age of superannuation and the Regulations itself indicated that it would apply in respect of the employees who were in employment as on 1.11.1993, which certainly enabled the petitioner to claim the benefit of the Regulations as being applicable. Therefore a plain reading of Regulation 26 would certainly apply to the petitioner who is to be treated as a Specialist Officer. The incidental circumstances that the petitioner was posted as an Assistant General Manager in charge of a branch was an exigency which the respondent -Bank sought to supply by appointing the petitioner who was certainly a Specialist Officer since she was also capable of discharging the duties of an in-charge Assistant General Manager. That it did not detract from the fact that the petitioner was certainly a Specialist Officer. The mere instance of the petitioner having discharged the duties of an Assistant General Manager- in charge of a Branch did not render him any less a Specialist Officer. The incidental reference to a decision of this Court in the case of B. Vittal Pat vs. Syndicate Bank, would not advance the case of the respondent. Incidentally, that was a case of an officer in the general cadre of the respondent - Bank and was not a Specialist Officer. It was also a case of an officer who had retired from service even before the Pension Regulations came into force. It was an incidental contention that the second and third proviso to Regulation 26 were null and void, since according to the petitioners therein, by virtue of the same there was discrimination between officers who retired before the Pension Regulations came into force and those who retired after the same came into force. The points for consideration framed in that case which would be relevant in so far as the present case on hand is concerned, is Point No.4 which reads as follows:

(4) Whether, in view of the second and third proviso given to Regulation 26 of the Pension Regulations, in the absence of Recruitment Rules of the Bank providing for making the Regulations applicable to the post held by the petitioner with the approval of the Central Government, the petitioner is entitled for the benefit of five years of service as claimed by him?

And the same Is answered as follows by the learned Single Judge:

Re.Questions (3) & (4):

10. Since questions (3) and (4) are interlinked, I am of the view that it is convenient to consider both the questions together. At the outset I may point out that my answer on Question No.3 should unhesitatingly he against the petitioner. However, before I proceed to consider the said question, it is useful to extract Regulation 26 of the Pension Regulations which reads thus:

26. Addition to qualifying service in special circumstance:-

An employee shall he eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of is service or actual period by which his age at the time of recruitment exceeded the upper age limit specified by the Bank for direct recruitment exceeded the upper age limit specified by the Bank for direct recruitment or a period of five years, whichever is less, if the service or post to which the employee is appointed is one.

(a) for which post graduate, research, or specialist qualification or experience in scientific, technological, or professional fields, is essential; and

(b) to which candidates of age exceeding the upper age limit specified for direct recruitment are normally recruited;

(c) for which the candidates was given age relaxation over and above the maximum age limit fixed by the Bank on account of his possessing higher qualifications or experience;

Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time he quite the service in the Bank is not less than ten years;

Provided further that this confession shall be admissible if the recruitment rules in respect of the said service or post contain specific provision that the service or post is one which carries benefit of this regulation;

Provided also that the recruitment rules in respect of any service or post which carries the benefit of this regulation shall be made with the approval of the Central Government.

As it can be seen from Clause(a) of Regulation 26, an employee is entitled for the benefit of the extended service of five years, provided he was appointed to a post for which post graduate research, or specialist qualification or experience in scientific, technological or professional fields, was required. The order of appointment of the petitioner in the respondent-Bank, a copy of which has been produced as Annexure-C, does not state that the petitioner was appointed on account of the post graduate research, specialist qualification or experience in scientific, technological or professional fields. The said order simply states that the petitioner was appointed as an Officer of the Bank. There is no material placed before me my the petitioner to show that the petitioner was appointed keeping in mind his specialist qualification or experience. Therefore, as observed by me earlier, I am of the view that the petitioner, on facts, is not entitled for the benefit of Regulation 26 of the Pension Regulations. Even otherwise, in my view, Regulations 26 is prospective in nature. As rightly contended by Sri Ramadas, while benefit of pension is made retrospective, the provisions contained in Regulation 26 are made prospective. This is clear from the provisos given to Regulation 26.

11. Now, the last question is as to whether the second and third provisos given to Regulation 26 of the Pension Regulations are required to be struck down as discriminary in nature as contended by Sri Rajagopal. Even on this question, I am unable to accede to the submission of Sri. Rajagopal. As noticed by me

earlier, when the Pension Scheme is made operative retrospectively, Regulation 26 of the Pension Regulations, In my view, is prospective in operation. Further, payment of pension was not one of the conditions of service, which was applicable to the employees of the Bank till passing of the Pension Regulations. Therefore, merely because the benefit of Regulation 26 is not given to all the employees including the employees who have retired from service, it is not possible to take the view that the second and third provisos given to Regulation 26 are liable to be struck down as discriminatory in nature The benefit of previous service is an additional concession given by the Pension Regulations; and that too limited number of posts which satisfy the requirements laid down in the said Regulations. While framing the Pension Regulations, since now benefits are extended, in my view, it is open to the Bank to make it prospective in operation. It is not the case where the petitioner and other employees of the Bank were entitled for the benefit of the Pension Scheme and an additional benefit under the Scheme is sought to be given to the existing benefits. Therefore, Sri Rajagopal cannot derive any assistance from the decision of the Supreme Court in the case of D.S.Nakara (supra). As observed by me earlier, in the instant case, the benefit of the Pension Scheme was introduced for the first time after the retirement of the petitioner from service. In my view, while introducing the Pension Scheme for the first time, as it has been done in the instant case, white the Scheme was made to come into operation with effect from 1996, it was open to the Authorities to impose certain conditions to make the Scheme applicable in respect of part of the additional benefit given under the Scheme prospective in operation. In such cases, there is no question of discrimination or any scope for making a grievance that such provisions are violative of Article 14 of the Constitution of India. The provision in the Scheme has to be understood in the backdrop of the timing and, object of the introduction of the Scheme. The two provisos impugned which impose certain conditions for the benefit of additional service of five years, in my view, cannot he considered as either unreasonable or arbitrary. The decision of the Supreme Court in Kasturi vs Managing Director (supra), in my view, is a complete answer to the submission of Sri Rajagopal. In the said decision, the Supreme. Court has elaborately reviewed the earlier case law on the subject and after referring to the various judgments of the Supreme Court, noticed a distinction between the grant of new pensionary benefits and additional or liberalised pensionary benefits to the twisting pensionary benefits. It is useful to refer to Paragraphs-19, 25 and 26 of the said judgment, which reads as hereunder:

19. Learned Counsel for the appellant, at the outset, invited our attention to the Constitution Bench decision of this Court in D.S.Nakara (supra). The Constitution Bench in the aforesaid case, speaking through D.A.Desai, J, had to consider the question of a cut-off dare found in the pension scheme which was uniformly applicable to all the Central Government employees who had formed one class at the time of retirement and who were entitled to pension. The question was whether amount of pension which was computed for them in the light of available

formula could have been further enhanced on the basis of a subsequent more beneficial formula and whether it could be denied only on the ground that they had retired prior to the dale on which such enhanced computation of pension was made available to the pensioners, In the light of the aforesaid fact situation it was observed that all employee governed by the pension scheme and had became eligible to earn pension at the time of their retirement formed one class, it was held that such a cut-off date for granting additional benefits to only some of the pensioners in the same class of employees could not be countenanced on the touchstone of Article 14 of the Constitution of India. In para-8 of the report it was noted that the:

Primary contention is that the pensioners of the Central Government form a Class for the purpose of pensionary benefits and there could not be mini-classification within the class designated as pensioners.

A question was posed in para 9 of the report that can this class of pensioners further be divisible for the purpose of ''entitlement'' and ''payment'' of pension into those who retired by certain date and those who retired after that date. The aforesaid decision cannot be of any assistance to learned Counsel for the appellant on the facts of the present case. In Nakara''s case admittedly all the Central Government Servants were governed by pension scheme and were eligible to draw pension on retirement. They therefore, formed one class. In the facts of the present case, it is difficult to appreciate how the appellant can be said to he forming the same class of employees who came to he later on governed for the first time in 1986 by the pension scheme by being conferred the benefit of newly introduced pension eligibility as per amended clause(c) of rule 22(1). The new class of employees covered by it was consisting of all the then existing members of the fund who had completed 20 years of pensionable service and who could be below the age of 50 years at the time of their retirement as the earlier restriction of age of 55 years as found in clause(a) of rule 22(1) was revised by re-enacting clause(c). It is also to be noted that earlier clause(1) gave retires at the age of 50 years full pension. And clause(c) should to give retires below 50 years only proportionate pension for the first lime after September, 1986. This new class of employees were for the first time made eligible to get the benefit of pension scheme under Rule 22(1). Such pensionary benefit was not available to them prior to the amendment of clause(c) of rule 22(1). Hence, it was certainly a new pension scheme for them and not old wine in a new bottle. For such class of employees there was no question to any mini-classification as for the entire class of such employees of the first time the benefit of pension scheme was made available by the amendment. The decision of the Constitution Bench in Nakara''s case therefore, cannot advance the case of learned Counsel for the appellant. We may also mention that the ratio of Nakara''s case was distinguished by two later Constitution Bench decisions of this Court...

25. We may now turn to two decisions of this Court which have a direct bearing

on the result of these proceedings. In the case of Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, , a two Judge Bench of this Court had to examine the new revised Rules which had reduced the requisite minimum qualifying service for earning pension while considering the case of a person who had retired earlier and was ineligible to get pension under the Rules in force then. This Court held that he could not be given eligibility for pension by virtue of the amended Rule. In the said case, the Bench examined the fact situation wherein the claimant was a Commissioned Officer. He retired on 18.5.1982. On the date of his retirement only 2/3rd of pre-commissioned service was allowed to be counted towards qualifying service for earning pensionary benefits. The pension Rules were amended with effect from 1.1.1986 and the full commissioned service was directed to be taken into account for working out the qualifying service. While the High Court allowed the Writ Petition based on Nakara''s case (supra) this Court held that Nakara''s case has no application as the Claimant was ineligible for grant of pension because on the date of his retirement he did not possess the qualifying service as per the Rules then existing. It becomes obvious, therefore, that when the person earlier retiring from service is not eligible to get pension as per the Rules, then if by subsequent prospective amendment of the Rules such class of persons are brought within the sweep of pension provisions, these provision so have to be treated a new scheme of pension which cannot apply to those employees who retired prior to the advent of such a new pension scheme. The fact situation in the present case is, almost parallel. We do not see any, reason why the ratio, of the said decision cannot be applied to the present case.

26... We may also lastly refer to a decision of two Judge Bench of this Court in Union of India and Others vs. Lieut (Mrs.) E. Lacats, Judgement 1997 (7) SC 279, Sujata Manohar, J in that case examined liberalised pension scheme by which the group of employees who were earlier not covered by the pension scheme were conferred benefit from a given, date. As the respondent before the Court had already retired prior to that date, he was held that entitled to benefits of liberalised pension scheme. It was held that such a respondent could not claim of discriminatory treatment the grant of pension because there was no provision for grant of pension in the terms and conditions of her appointment which she had herself accepted. The appellant''s case also fails in the same category of cases which were examined in the aforesaid decision by this Court. This decision also, therefore, goes in favour of the respondent and against the appellant.

As observed by me earlier, the law laid down by the Supreme Court in the case of Kasturi (supra), in my view, would clearly support the view I have taken above to negative the contention of Sri Rajagopal. In the light of the discussion made above, I find it unnecessary to refer to some of the other decisions relied upon by Sri Rajagopal.

As can be seen above, the reasoning of the learned Single Judge was in a different context altogether and cannot be said to apply to the present case on hand. The petitioner does not seek to question the validity of the provisos to the Regulation for the reason that the same would not be relevant in so far as the petitioner''s case is concerned. En that view of the matter, the Bank seeking 10 deny the addition of five years of qualifying service, is unfair and illegal. The petition stands allowed. Annexure-"M" is quashed. The respondents are directed to grant the benefit of additional qualifying service as contemplated under Regulation 26 of the Syndicate Bank Employees Pension Regulations, 1995 and the respondents shall recalculate the pension that the petitioner would be entitled to and grant all consequential benefits that flow from the order of refixation including the arrears that are payable, with applicable interest as the petitioner would be statutorily entitled to, within a period of four weeks from the date of receipt of a certified copy of this order, if not earlier.